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13 Technologies, Inc.

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JULIE BARFUSS, et al.

Plaintiffs,

v.

LIVE NATION ENTERTAINMENT,  
INC., TICKETMASTER L.L.C.,  
KROENKE SPORTS &  
ENTERTAINMENT, LLC, SOFI  
TECHNOLOGIES, INC., and DOES 1  
through 10, inclusive.

Defendants.

Case No. 2:23-cv-01114-GW-KK

Assigned to the Hon. George H. Wu

**NOTICE OF MOTION AND  
MOTION TO STAY UNTIL  
RESOLUTION OF HECKMAN  
APPEAL OR IN THE  
ALTERNATIVE MOTION TO  
DISMISS PLAINTIFFS' CLAIMS  
AGAINST DEFENDANT SOFI  
TECHNOLOGIES, INC.)**

Courtroom: 9D (1st St. Courthouse)

Date: February 26, 2024

Time: 8:30 a.m.

**TO THE CLERK OF COURT AND ALL PARTIES AND THEIR  
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on February 26, 2024, at 8:30 a.m.<sup>1</sup> or as soon thereafter as the matter may be heard in the above entitled Court, located at 350 W. 1st Street, Los Angeles, CA 90012, Department 9D, Defendant SoFi Technologies, Inc. (“SoFi”) will move the Court to fully stay the proceedings as to SoFi until the conclusion of the appeal in *Heckman v. Live Nation Entertainment Inc.*, Case No. 2:22-CV-00047-GW-GJS, consistent with the stay provided to Defendants Ticketmaster and Live Nation; or in the alternative, and without waiving any right to arbitrate, move to dismiss the action pursuant to Rules 12(b)(6), 8(a), and 9(b) of the Federal Rules of Civil Procedure.

SoFi moves to fully stay this action in light of the ongoing arbitration issues, which also may implicate the claims against SoFi. As such, based on Court’s inherent powers and in light of case law such as *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1128-29 (9th Cir. 2013) (holding that a non-signatory may be able to enforce an arbitration provision where “the signatory alleges substantially interdependent and concerted misconduct by the nonsignatory and another signatory and ‘the allegations of interdependent misconduct [are] founded in or intimately connected with the obligations of the underlying agreement.’”) (quoting *Goldman v. KPMG LLP*, 173 Cal. App. 4th 209, 219 (2009)), and for efficiency and consistency, this action as against SoFi should be stayed consistent with the stay provided to Ticketmaster and Live Nation.

In the alternative, and without waiving any of its right to arbitrate, SoFi moves to dismiss this action because Plaintiff’s Second Amended Complaint fails to state a claim upon which relief can be granted, includes shotgun pleadings with

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<sup>1</sup> Defendant SoFi Technologies, Inc., noticed this Motion for February 26, 2024, for electronic filing purposes, but recognizes that the Court indicated at the November 6, 2023 Status Conference that the Motion will not be heard until after the Ninth Circuit rules on Ticketmaster and Live Nation’s Motion to Compel Arbitration in the *Heckman* litigation.

1 respect to SoFi, and fails to plead fraud with particularity. Specifically, Plaintiffs  
2 include vague allegations against SoFi, which do not meet the requisite elements on  
3 any of the claims alleged against it under the Cartwright Act and Business and  
4 Professions Code § 17200, et seq. Plaintiffs have failed to plead viable claims with  
5 sufficient factual detail as required by *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
6 544, 555-56 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also*  
7 *Kendall v. Visa U.S.A. Inc.*, 518 F.3d 1042, 1047 (9th Cir. 2008).

8 The motion will be based on this Notice of Motion and Motion, the  
9 Memorandum of Points and Authorities filed herewith, and the pleadings and  
10 papers filed herein.

11 This motion is made following the conference of counsel pursuant to L.R. 7-  
12 3 which took place on November 17, 2023, and thereafter on December 8 and  
13 December 12, 2023.

14  
15 Dated: December 15, 2023

Respectfully submitted,

16 BERRY SILBERBERG STOKES PC

17  
18 /s/ Joshua C. Stokes

19 Robert P. Berry  
20 Carol M. Silberberg  
21 Joshua C. Stokes  
22 Attorneys for Defendant SoFi  
23 Technologies, Inc.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**  
**MOTION TO STAY**

Defendant SoFi Technologies, Inc. (“SoFi”) moves the Court to stay its obligation to respond to Plaintiffs’ Second Amended Complaint (“SAC”) until after the Ninth Circuit rules on Ticketmaster and Live Nation’s appeal from this Court’s denial of their motion to compel arbitration in *Heckman v. Live Nation Entertainment Inc.*, Case No. 2:22-CV-00047-GW-GJS, and any potential motion to compel arbitration is filed and decided in this case. At the November 6, 2023 status conference in this matter, the Court stayed the proceedings in this case until the Ninth Circuit rules on the *Heckman* appeal, with the exception of requiring SoFi and Defendant Kroenke Sports & Entertainment, LLC (“KSE”) to file a responsive pleading. Defendant SoFi simply requests that its obligation to respond to the SAC be stayed until Defendants Ticketmaster and Live Nation’s motion to compel is ruled upon and/or their responsive pleadings are due.

This Court has the power to stay proceedings in this matter under “the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). In determining whether to grant a stay, the Court weighs the competing interests of the parties. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (granting stay during pendency of other proceedings affecting the resolution of the litigation in the district court). Those competing interests include “the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.” *Id.*; see also, *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979) (a district court may “find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent

1 proceedings which bear upon the case.”).

2 Here, all of the factors militate in favor of a stay. First, there is no possible  
3 damage to the non-moving party. The main thrust of the allegations in the SAC are  
4 against Ticketmaster and Live Nation. The Court has already stayed the proceedings  
5 in this case, pending the Ninth Circuit’s ruling in the *Heckman* case. In the event that  
6 the Ninth Circuit overrules the Order denying the motion to compel arbitration in the  
7 *Heckman* matter, Ticketmaster and Live Nation are likely to move to compel  
8 arbitration in this case. Defendant SoFi reserves the right to move to compel  
9 arbitration against Plaintiffs, who are signatories to the written contracts containing  
10 the arbitration provisions, under an equitable estoppel theory. *Franklin v. Community*  
11 *Regional Medical Center*, 998 F.3d 867, 870-71 (9th Cir. 2021) (holding that plaintiff  
12 signatory to employment contract with an arbitration agreement was equitably  
13 estopped from avoiding arbitration against non-signatory defendant); *Kramer v.*  
14 *Toyota Motor Corp.*, 705 F.3d 1122, 1128-29 (9th Cir. 2013) (holding that a non-  
15 signatory may be able to enforce an arbitration provision where “the signatory alleges  
16 substantially interdependent and concerted misconduct by the nonsignatory and  
17 another signatory and ‘the allegations of interdependent misconduct [are] founded in  
18 or intimately connected with the obligations of the underlying agreement.’”) (quoting  
19 *Goldman v. KPMG LLP*, 173 Cal. App. 4th 209, 219 (2009)). Second, Defendant  
20 SoFi will suffer hardship and inequity if it is forced to move forward with this  
21 litigation now. Without a stay, Defendant SoFi is forced to respond to the SAC  
22 despite the fact that its ability to compel arbitration is dependent on the enforceability  
23 of Ticketmaster and Live Nation’s arbitration clauses. And SoFi may also seek to  
24 further stay the litigation in this Court until after any arbitration between Plaintiffs  
25 and Defendants Ticketmaster and Live Nation is completed pursuant to 9 U.S.C. § 3.  
26 SoFi should not be obligated to challenge the SAC while Ticketmaster and Live  
27 Nation, the principal defendants in this action, are not. Finally, a stay will simplify  
28 the issues, proof, and questions of law in the matter. Given that the allegations against

1 SoFi are—at best—derivative of the allegations against Ticketmaster and Live  
2 Nation, having those issues briefed at the same time will foster judicial economy for  
3 the Court and the parties.

4 In light of the stay that the Court has already ordered, and given that the  
5 Court has already ordered that any hearing on Defendant SoFi's Motion to Dismiss  
6 will not be heard until after the Ninth Circuit rules in the *Heckman* case, SoFi  
7 respectfully requests that the Court stay SoFi's obligation to respond to the SAC  
8 until after any motion to compel arbitration is ruled upon in this matter.

9  
10 Dated: December 15, 2023

Respectfully submitted,

11 BERRY SILBERBERG STOKES PC  
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13 /s/ Joshua C. Stokes

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15 Carol M. Silberberg  
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17 Attorneys for Defendant SoFi  
18 Technologies, Inc.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**  
**MOTION TO DISMISS UNDER RULE 12(B)(6)**

**I. INTRODUCTION**

Plaintiffs, who claim to have been frustrated buying tickets to Taylor Swift concerts, filed the Second Amended Complaint (“SAC”) alleging that Ticketmaster and Live Nation have engaged in anticompetitive actions in connection with the primary and secondary ticketing services offered to venues in the U.S. And, on information and belief (and only in the most conclusory fashion), Plaintiffs lumped Defendant SoFi Technologies, Inc. (“SoFi”), into their claims against the other Defendants alleging fraud, negligent misrepresentation, antitrust violations under the Cartwright Act (under multiple theories), and violations of California’s Unfair Competition Law.<sup>1</sup>

Although Plaintiffs’ SAC is over 50 pages long and includes nearly 500 numbered paragraphs, there are *no* substantive allegations against SoFi. None. The only allegations against SoFi are that “Plaintiffs are *informed and believe* and on that basis allege that SoFi pays considerable sums to have its names on and to sponsor the stadium and the events held there, and receives substantial benefits from such investment, including from Taylor Swift and other concert sales.” (SAC ¶ 367.) In the rest of the SAC, Plaintiffs improperly group both SoFi and Defendants Kroenke Sports & Entertainment, LLC (“KSE”) together into the definition of “SoFi Stadium” despite the fact that there are no allegations anywhere in the SAC that SoFi does anything more than pay to have its name on a stadium

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<sup>1</sup> Plaintiffs have alleged six causes of action, but have only brought four claims against SoFi: Second Claim for Relief – Fraud, Third Claim for Relief – Negligent Misrepresentation, Fifth Claim for Relief – Antitrust Violations, and Sixth Claim for Relief – Section 17200 violations. The First and Fourth causes of action are only alleged against Ticketmaster and Live Nation. In the meet and confer process prior to filing this Motion, Plaintiffs agreed to dismiss the fraud and negligent misrepresentation claims against SoFi in the Second and Third Claims for Relief, and the price discrimination antitrust claims within the Fifth Claim for Relief, and, thereafter, filed a Notice of Withdrawal of Claims consistent with that agreement. See ECF No. 102.

1 building. There are no allegations that SoFi has any role whatsoever in the  
 2 management of the ticketing at stadium, that it had any role in selecting  
 3 Ticketmaster as the ticketing services provider, that it had any role in the Taylor  
 4 Swift ticket sales at issue in the SAC, or that it had any role in any of the other facts  
 5 alleged in the SAC. There are no SoFi employees identified as having made any  
 6 agreements with any other Defendant. There are no SoFi employees identified as  
 7 having made any statements to the public about the presales for Taylor Swift shows  
 8 that form the basis of Plaintiffs' claims. There are no allegations that SoFi is  
 9 anything other than what it has publicly stated it is: a financial services company  
 10 that allows its members to "borrow, save, spend, invest and protect their money."  
 11 SoFi's only potential connection to the allegations in the SAC is as the stadium's  
 12 naming rights sponsor.

13 Under both federal pleading standards and California law, all of Plaintiffs'  
 14 claims fail. On the pleading side, all the claims alleged against SoFi must be pled  
 15 with particularity, alleging specifically who agreed with whom about what and  
 16 when, which the Plaintiffs simply failed to do. Additionally, because the only  
 17 factual allegations against SoFi are that, on information and belief, SoFi allegedly  
 18 receives economic benefits from ticket sales at the stadium, Plaintiffs' threadbare  
 19 allegation is insufficient to meet the elements of any of the claims. There are simply  
 20 no allegations *at all* of any actions taken by SoFi related to the Plaintiffs' claims.  
 21 Accordingly, Plaintiffs' claims against SoFi for "antitrust violations" and unfair  
 22 competition under Section 17200 fail and should be dismissed with prejudice.

## 23 II. ALLEGED FACTS<sup>2</sup>

### 24 A. General Allegations Regarding Ticketing.

25 The central premise of the allegations in the SAC is that Plaintiffs were  
 26 unable to buy tickets to Taylor Swift concerts because "[t]hey experienced a well-

27  
 28 <sup>2</sup> For the purposes of this motion to dismiss only, SoFi treats the properly pled  
 factual allegations as true.

1 publicized ticket presale disaster that occurred on November 15 and 16, 2022,  
 2 continued with the cancellation of general sale tickets hitherto scheduled for  
 3 November 18, 2022 . . . .” (SAC ¶ 5.) Plaintiffs then claim that the “presale  
 4 disaster” was not simply a mismatch between supply and demand for the tickets,  
 5 but instead part of some sweeping intentional scheme by Ticketmaster and Live  
 6 Nation. According to Plaintiffs, Ticketmaster and Live Nation made agreements  
 7 “with the stadiums in every location of the Taylor Swift tour” to be the primary  
 8 ticketing services provider. (SAC ¶ 376.) Ticketmaster, according to Plaintiffs,  
 9 requires that those venues also use Ticketmaster’s Secondary Ticket Exchange,  
 10 which in turn means that resellers and ticket purchasers must use Ticketmaster’s  
 11 Secondary Ticket Exchange. (SAC ¶ 377.) However, Plaintiffs also acknowledge  
 12 that ticket resellers and ticket buyers could actually use other secondary ticket  
 13 exchanges outside of Ticketmaster’s Secondary Ticket Exchange, but because  
 14 purchasers on those other exchanges run a higher risk of being scammed,  
 15 Ticketmaster’s Exchange is “the only real choice for buying tickets previously sold  
 16 to others.” (SAC ¶ 379.)<sup>3</sup>

17 Plaintiffs also allege that Ticketmaster “controlled the registration and access  
 18 to Taylor Swift’s ‘The Eras’ Tour tickets,” and promised “preferred access” for  
 19 ticket purchasers of Ms. Swift’s previously cancelled “Lover Fest” concert tour to  
 20 participate in this sale as ‘verified’ fans.” (SAC ¶ 375.) Fans who purchased a  
 21 certain amount of Taylor Swift merchandise could also get a “verified” code. (SAC  
 22 ¶¶ 411, 440.) On November 14, 2022, “‘verified’ fans of TaylorSwiftTix presale  
 23 were sent a code” that would allow them to participate in the presale. (SAC ¶ 380.)  
 24 But based on information and belief, “thousands of ‘verified’ fans were not sent  
 25 codes or were sent codes that did not work.” (SAC ¶ 380.) On information and  
 26 belief, Plaintiffs allege that “millions of ‘verified’ fans that had received codes were

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27 <sup>3</sup> A simple search for Taylor Swift concert tickets on websites such as StubHub or  
 28 SeatGeek will clearly reveal tickets available in the secondary ticket market beyond  
 Ticketmaster.

1 unable to purchase tickets,” due to “the excessive distribution of codes and the  
 2 addition of 14 million non-verified Ticketmaster users that were allowed access to  
 3 the TaylorSwiftTix presale.” (SAC ¶ 381.) Plaintiffs contend that Ticketmaster  
 4 intentionally allowed ticket scalpers and bots into the presales, depriving Plaintiffs  
 5 and other fans the opportunity to buy tickets, and allowed ticket resales during the  
 6 presales, which resulted in Plaintiffs and other ticket purchasers paying more than  
 7 face price for these tickets. (SAC ¶¶ 384-88.) Plaintiffs further contend that  
 8 Ticketmaster, not SoFi, sold obstructed view tickets without disclosing them as  
 9 such, sold VIP tickets knowing that portion of the package would be voided, sold  
 10 ADA-compliant seats without verification of disability or need, and allowed bots  
 11 and scalpers to remove tickets from a fan’s online cart before the fan could  
 12 complete the sale. (SAC ¶¶ 389-94.)

13 Plaintiffs, apparently frustrated with the prices they had to pay for tickets to  
 14 Taylor Swift concerts due to high demand, allege that they were each individually  
 15 damaged in the “thousands of dollars” that they spent purchasing Taylor Swift  
 16 merchandise and tickets. (SAC ¶ 419.)

17 **B. Scant Allegations Against SoFi.**

18 Notably, despite its length, the SAC contains hardly any reference to  
 19 Defendant SoFi at all. This is not surprising being that SoFi has nothing to do with  
 20 ticketing for concerts. Rather SoFi is a financial services company whose only  
 21 connection to the allegations in the SAC is that it pays “considerable sums to have  
 22 its name on and to sponsor the stadium and the events held there.” (SAC ¶ 367.)  
 23 Thus, there are no substantive allegations that Defendant SoFi was involved at all,  
 24 on any level, with the ticket sales complained of. While Plaintiffs use the term  
 25 “SoFi Stadium” as including both Defendant KSE and SoFi (SAC ¶ 368)—and  
 26 utilize that aggregated term to lump SoFi into various allegations—in the entire  
 27 SAC, the only claim about SoFi’s relationship to these Taylor Swift concerts is, on  
 28 information and belief only, that SoFi “receives substantial benefits from such

1 [sponsorship] investment, including from Taylor Swift and other concert ticket  
 2 sales.” (SAC ¶¶ 367, 376.) While that is simply not true, for purposes of this motion  
 3 to dismiss, such allegations come nowhere close to alleging an actionable claim  
 4 against SoFi under the Cartwright Act and Section 17200. As such, the claims  
 5 against SoFi should be dismissed.

### 6 III. LEGAL STANDARD

7 On a motion pursuant to Rule 12(b)(6) of the Federal Rules of Civil  
 8 Procedure, the Court must take all well-pleaded allegations as true. *Ashcroft v.*  
 9 *Iqbal*, 556 U.S. 662, 678 (2009). However, “threadbare recitals of the elements of a  
 10 cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*,  
 11 556 U.S. at 678 (Rule 8(a) “does not unlock the doors of discovery for a plaintiff  
 12 armed with nothing more than conclusions”); *see also Kendall v. Visa U.S.A. Inc.*,  
 13 518 F.3d 1042, 1047 (9th Cir. 2008); *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969  
 14 (9th Cir. 2009). Where, as here, Plaintiffs allege concerted efforts by multiple  
 15 defendants, courts require “a complaint with enough factual matter (taken as true)  
 16 to suggest an agreement was made”; the factual allegations “must be enough to  
 17 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550  
 18 U.S. 544, 555-56 (2007). It is not enough that a complaint show “a sheer possibility  
 19 that a defendant has acted unlawfully”; rather, a court must determine whether a  
 20 complaint states a “plausible” claim for relief, and this determination must be “a  
 21 context-specific task that requires the reviewing court to draw on its judicial  
 22 experience and common sense.” *Iqbal*, 556 U.S. at 678-79. Thus, a complaint must  
 23 include not only legally sufficient allegations that each defendant made a  
 24 “‘conscious commitment to a common scheme designed to achieve an unlawful  
 25 objective,’” *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 764 (1984)  
 26 (quoting *Edward J. Sweeney & Sons, Inc. v. Texaco, Inc.*, 637 F.2d 105, 111 (3rd  
 27 Cir. 1980)), but also “facts such as a ‘specific time, place, or person involved in the  
 28 alleged conspiracies’ to give a defendant seeking to respond to allegations of a

1 conspiracy an idea of where to begin,” *Kendall*, 518 F.3d at 1047 (quoting  
 2 *Twombly*, 550 U.S. at 565 n.10). Where the plaintiff seeks to infer agreement from  
 3 parallel conduct, the complaint must plead factual allegations establishing that that  
 4 conduct would have been against the defendants’ independent self-interest absent  
 5 an unlawful agreement. *Twombly*, 550 U.S. at 553-54; *Kendall*, 518 F.3d at 1049  
 6 (citing *Twombly*, 550 U.S. at 553-557 & n.5).

7 Furthermore, under Rule 9(b), a party alleging fraud “must state with  
 8 particularity the circumstances constituting the fraud or mistake.” Fed. R. Civ. P.  
 9 9(b). Where a claim contains “averments of fraud,” as in Plaintiffs’ Sixth Claim for  
 10 Relief for Section 17200 violations, Rule 9(b)’s particularity requirement applies to  
 11 those specific allegations. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103,  
 12 1106 (9th Cir. 2003) (“Rule 9(b) applies to ‘averments of fraud’ in all civil cases in  
 13 federal district court, and that in cases in which fraud is not an essential element of  
 14 the claim, Rule 9(b) applies, but only to particular averments of fraud.”).

#### 15 IV. ARGUMENT

##### 16 A. Antitrust Claims.

17 Plaintiffs’ Fifth Claim for Relief alleges a kitchen sink of unsupportable  
 18 antitrust violations under the Cartwright Act against all Defendants, including  
 19 claims of unlawful tying arrangements, exclusive dealing arrangements, price  
 20 discrimination, price fixing, group boycotts, and market division.<sup>4</sup> As an initial  
 21 matter, Plaintiffs’ claims—that they were not able to get tickets to the biggest, most  
 22 popular tour in 2023, or that they had to pay more for those tickets than they  
 23 wanted to—do not rise to the level of antitrust claims. Plaintiffs have attempted to  
 24 spin up simple ticket buying frustrations into something they are not, an antitrust  
 25 scheme to harm competition in the ticketing market. Putting aside the factual  
 26  
 27

28 <sup>4</sup> In the meet and confer process, Plaintiffs agreed to drop the Price Discrimination  
 based claims against SoFi. See ECF No. 102.



1 inconsistencies in some of these allegations,<sup>5</sup> Plaintiffs claims fail because they do  
2 not include any substantive allegations against SoFi.

3 The SAC repeatedly states that the only connection between SoFi and the  
4 allegations in the SAC are that SoFi is the naming rights sponsor and that SoFi  
5 allegedly receives some indirect economic benefit from ticket sales at SoFi  
6 Stadium. (SAC ¶¶ 367, 376.) SoFi is merely the naming rights partner—a sponsor  
7 that pays the stadium to have the SoFi name and logo on the stadium. It does not  
8 have—and is not alleged to have—any involvement whatsoever in the management  
9 of the ticketing for events at the stadium, or any involvement in the selection of  
10 ticketing service providers. It has no role—and is not alleged to have any role—in  
11 putting on live events, such as the Taylor Swift concerts at issue in this case. And it  
12 has no role—and is not alleged to have any role—in managing ticketing presales or  
13 onsales for events at the stadium or even the secondary resale of tickets.

14 The allegations in the SAC only tangentially reference SoFi and appear to  
15 suggest that SoFi is some sort of co-conspirator in the alleged antitrust violations.  
16 However, Plaintiffs’ claims are patently insufficient under *Twombly*, *Iqbal*, and  
17 *Kendall* because they do not allege any acts taken by SoFi at all, let alone in  
18 furtherance of some alleged antitrust violation. These allegations are precisely what  
19 the Supreme Court referred to as improper threadbare recitals and conclusory  
20 allegations. *Iqbal*, 556 U.S. at 678. In order to set out a claim against SoFi,  
21 Plaintiffs must allege “facts such as a ‘specific time, place, or person involved in  
22 the alleged conspiracies,’ to give a defendant seeking to respond to allegations of a  
23 conspiracy an idea of where to begin.” *Kendall*, 518 F.3d at 1047 (quoting  
24 *Twombly*, 550 U.S. at 565 n.10). Plaintiffs have done nothing of the sort here.

25 \_\_\_\_\_  
26 <sup>5</sup> For example, Plaintiffs allege that Ticketmaster has exclusive primary and  
27 secondary ticketing contracts with all the venues on the Taylor Swift tour (SAC  
28 ¶¶ 436-38), but then also allege that Ticketmaster has engaged in horizontal price  
fixing with its competitors, including SeatGeek (SAC ¶¶ 466), that SeatGeek has  
primary ticketing venues of its own (SAC ¶ 481), and that SeatGeek is also  
involved in a group boycott of other competitors who do not agree to  
Ticketmaster’s demands (SAC ¶ 474).



1           **1.     Tying.**

2           In order to allege a tying claim under the Cartwright Act, Plaintiffs must  
 3 allege ““(1) a tying agreement, arrangement or condition existed whereby the sale  
 4 of the tying product was linked to the sale of the tied product or service; (2) the  
 5 party had sufficient economic power in the tying market to coerce the purchase of  
 6 the tied product; (3) a substantial amount of sale was affected in the tied product;  
 7 and (4) the complaining party sustained pecuniary loss as a consequence of the  
 8 unlawful act.”” *Morrison v. Viacom, Inc.*, 66 Cal. App. 4th 534, 541-42 (1998)  
 9 (quoting *Classen v. Weller*, 145 Cal. App. 3d 27, 37-38 (1983)).

10           Plaintiffs allege that “Ticketmaster and all the venues part [sic] of the Taylor  
 11 Swift’s upcoming tour, including SoFi Stadium, and those owned or controlled by  
 12 Live Nation, have agreed to and do mandate that all Taylor Swift tickets sold in the  
 13 Primary Ticket Market are not resold in the Secondary Ticket market other than  
 14 through Ticketmaster’s Secondary Ticket Exchange.” (SAC ¶ 438.) To the extent  
 15 Plaintiffs’ bring their claims under California Business & Professions Code section  
 16 16727 (SAC ¶ 435), those claims fail because Section 16727 only applies to goods  
 17 and does not apply to services. *Morrison*, 66 Cal. App. 4th at 546-48 (“appellants  
 18 have failed to state a cause of action under section 16727 because the alleged tying  
 19 product in this case, cable television, is a service and section 16727 does not apply  
 20 when the tying product is a service.”). Beyond that initial, fatal pleading failure,  
 21 Plaintiffs claims do not include any suggestion that SoFi had any role whatsoever in  
 22 the selection of Ticketmaster as the primary or secondary ticketing services  
 23 provider at SoFi Stadium or any role at all in any ticketing decisions for any Taylor  
 24 Swift shows. The allegations, at best, allege that Ticketmaster required its  
 25 Secondary Ticket Exchange to be used; SoFi is not alleged to be involved in those  
 26 decisions at all.

27           Plaintiffs also allege that Ticketmaster separately tied presale ticket code  
 28 eligibility to the purchase of Taylor Swift merchandise. (SAC ¶ 440.) Again, there

1 is no allegation that SoFi, as simply the naming rights sponsor of the stadium, had  
 2 any role whatsoever in determining how members of the public received any  
 3 presale codes (or any other code) to Taylor Swift concerts. Nor can Plaintiffs make  
 4 any such allegation because SoFi had no such role.

5 Plaintiffs' tying claim against SoFi should be dismissed. *Iqbal*, 556 U.S. at  
 6 678; *Twombly*, 550 U.S. at 555-56.

## 7 **2. Exclusive Dealing.**

8 In order to allege an illegal exclusive dealing arrangement, Plaintiffs must  
 9 allege an actual agreement in a relevant product market and geographic market, and  
 10 must allege that the exclusive dealing agreements in question foreclose competition  
 11 in a substantial share of the relevant market such that "opportunities for other  
 12 traders to enter into or remain in that market must be significantly limited . . . ."

13 *Tampa Elec. Co. v Nashville Coal Co.*, 365 U.S. 320, 327-29 (1961); *Dayton Time*  
 14 *Lock Serv., Inc. v. Silent Watchmen Corp.*, 52 Cal. App. 3d 1, 6-7 (1975) (citing  
 15 *Tampa Electric*, 365 U.S. at 327-28). While Plaintiffs allege that they were injured  
 16 by higher prices stemming from exclusive dealing arrangements between

17 Ticketmaster and the venues at which Taylor Swift concerts were held, (SAC ¶¶  
 18 447-49), this theory also fails for a number of reasons. First, SoFi is not alleged to  
 19 be a party to any agreement with Ticketmaster or any other ticketing services  
 20 company. SoFi is not alleged to have any control or authority over the ticketing  
 21 operations of any stadium or in the selection of ticketing service providers. The  
 22 only substantive allegations against SoFi are that it pays the stadium to put its name  
 23 and logo on the building. (SAC ¶ 367.) Those allegations are insufficient to state a  
 24 claim against SoFi. *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555-56.

25 Thereafter, Defendant SoFi is simply aggregated in the definition of "SoFi  
 26 Stadium" with Defendant KSE. Such shotgun pleading, both in this claim and  
 27 throughout the SAC, is inappropriate. *See, e.g., Morris v. Sun Pharma Global Inc.*,  
 28 2021 WL 3913191, at \*3 (C.D. Cal. May 13, 2021) (dismissing complaint due to

1 “shot-gun” and vague pleadings). Ultimately, Plaintiffs have not alleged and cannot  
 2 allege the fundamental aspect of an exclusive dealing claim, which is an agreement  
 3 between SoFi and any other Defendant related to the allegations in the SAC. *Iqbal*,  
 4 556 U.S. at 678; *Twombly*, 550 U.S. at 555-56.

5 Second, Plaintiffs have failed to allege any facts supporting the notion that  
 6 other ticketing companies have been unable to enter or remain in the market.  
 7 *Tampa Elec.*, 365 U.S. at 327-29. That failure of pleading is not surprising in light  
 8 of their other allegations that there are competing primary and secondary ticketing  
 9 services providers like SeatGeek and StubHub. (SAC ¶¶ 438, 465, 474, 481, 493.)

10 Finally, Plaintiffs bring their exclusive dealing claims under California  
 11 Business & Professions Code section 16727 (*see* SAC ¶ 447) and these claims fail  
 12 for the same reason the tying claims fail: Section 16727 only applies to the sale of  
 13 “goods, merchandise, machinery, supplies, commodities.” Cal. Bus. & Prof Code  
 14 § 16727. It does not apply, by its own terms, where the alleged exclusive dealing  
 15 contract is one for services, like the ticketing services contracts alleged here. The  
 16 exclusive dealing claims should likewise be dismissed.

### 17 **3. Price Fixing.**

18 Although Plaintiffs also attempt to allege a price fixing scheme among  
 19 ticketing companies, such allegations, once again, have absolutely nothing to do  
 20 with SoFi. As the Supreme Court held in *Twombly*, where a plaintiff alleges  
 21 concerted efforts by multiple parties, courts require “a complaint with enough  
 22 factual matter (taken as true) to suggest an agreement was made;” the factual  
 23 allegations “must be enough to raise a right to relief above the speculative level.”  
 24 550 U.S. at 555-56. In order to plead this type of unlawful agreement, Plaintiffs  
 25 must allege facts sufficient to show that each defendant made a “conscious  
 26 commitment to a common scheme designed to achieve an unlawful objective,”  
 27 *Monsanto*, 465 U.S. at 764, and “facts such as a ‘specific time, place, or person  
 28 involved in the alleged conspiracies,’ to give a defendant seeking to respond to

1 allegations of a conspiracy an idea of where to begin,” *Kendall*, 518 F.3d at 1047  
 2 (quoting *Twombly*, 550 U.S. at 565 n.10). It is not sufficient to allege merely  
 3 parallel conduct; a plaintiff must plead factual allegations establishing that that  
 4 conduct would have been against the defendants’ independent self-interest absent  
 5 an unlawful agreement. *Twombly*, 550 U.S. at 553-54 & n.7; *Kendall*, 518 F.3d at  
 6 1049 (citing *Twombly*, 550 U.S. at 553-557 & n.5); *see also*, *Freeman v. San Diego*  
 7 *Ass’n of Realtors*, 77 Cal. App. 4th 171, 189 (2000) (“A complaint for unlawful  
 8 price fixing must allege facts demonstrating that separate entities conspired  
 9 together . . . . A general demurrer will be sustained where the complaint makes  
 10 conclusory allegations of a combination and does not allege with factual  
 11 particularity that separate entities maintaining separate and independent interests  
 12 combined for the purpose to restrain trade.”)

13 Despite these black letter law requirements, the entirety of Plaintiffs’  
 14 horizontal price fixing allegation, states:

15 This agreement has allowed Ticketmaster to raise prices above what it  
 16 would be able to otherwise. Because Ticketmaster has competitors like  
 17 SeatGeek charge ticket prices at the same cost as Ticketmaster, it  
 18 prevents buyers from being able to find a cheaper alternative. The only  
 way prices could stay this high for both Ticketmaster and its  
 competitors is through an agreement between them in violation of  
 California antitrust laws.

19 (SAC ¶ 466.) Plaintiffs completely fail to meet their burden to allege the who, what,  
 20 when, and where of any agreement between Defendants and any other entity to fix  
 21 prices. The only allegation is that the price of tickets to see the same artist on the  
 22 same tour were the same in different venues, and there is no allegation that it would  
 23 be against any of the Defendants’ individual self-interest for the tour to have the  
 24 same prices to tickets in multiple cities, as is required under *Twombly* and its  
 25 progeny. But even more importantly, there are no allegations that SoFi had any  
 26 involvement in any agreement between ticketing companies regarding the price of  
 27 Taylor Swift tickets. Plaintiffs again fail to plead any claims against SoFi for  
 28 horizontal price fixing.

1 Plaintiffs also allege that “Ticketmaster committed vertical price fixing,” by  
 2 forcing ticket buyers to resell on its platform and controlling “what prices the buyer  
 3 can resell at.” (SAC ¶ 468.) Putting aside for a moment that this allegation directly  
 4 contradicts the prior admission in the SAC that Ticketmaster in fact does not force  
 5 primary ticket purchasers to sell through its secondary ticket service (SAC ¶ 379),  
 6 and further putting aside that Plaintiffs do not allege any facts supporting its  
 7 allegation that Ticketmaster controls or even agrees with the primary ticket buyer to  
 8 set the price to any secondary ticket purchasers, Plaintiffs once again fail to allege  
 9 that SoFi had anything to do with that alleged vertical price fixing scheme.  
 10 Therefore, Plaintiffs’ price fixing claims against SoFi should be dismissed.

#### 11 **4. Group Boycott.**

12 Plaintiffs’ group boycott claim is difficult to parse, but it appears to be that  
 13 Ticketmaster is alleged to have a set of unspecified demands that it imposes on its  
 14 competitors through a group boycott that includes SeatGeek and some unnamed set  
 15 of stadiums. (SAC ¶¶ 473-74.) According to Plaintiffs, “[a]ny competitor of  
 16 Ticketmaster that does not conform to its demands will be barred from doing  
 17 business with most if not all large concert venues.” (SAC ¶ 474.)

18 As with all of Plaintiffs’ other concerted action claims, the group boycott  
 19 claims fail to allege who participated in a group boycott, who was boycotted, and  
 20 how the boycott produced any damages to the Plaintiffs. That failure falls well short  
 21 of the federal pleading standards for conspiracy claims, and it falls well short of the  
 22 requirements for alleging group boycotts in violation of the Cartwright Act.  
 23 California courts require “a ‘high degree of particularity’ in the pleading of  
 24 Cartwright Act violations’, and therefore generalized allegations of antitrust  
 25 violations are usually insufficient.” *Freeman*, 77 Cal. App. 4th at 196 (internal  
 26 citations omitted). Merely asserting general allegations of a conspiracy  
 27 “unaccompanied by factual allegations of overt acts in furtherance of the conspiracy  
 28 are insufficient to state a group boycott antitrust claim.” *Id.* That is particularly true

1 as to SoFi, which is not a ticketing company or alleged to have any involvement in  
 2 ticketing. There are precisely zero allegations in the SAC that SoFi participated in  
 3 any agreement with any party to boycott any entity if they did not accede to the  
 4 unspecified “demands.”

5 These claims should be dismissed.

## 6 **5. Market Division Scheme.**

7 In the final antitrust theory Plaintiffs throw against the wall, Plaintiffs allege  
 8 some type of market division. Plaintiffs allege that Ticketmaster has “specifically  
 9 carved out small territories to give to competitors like SeatGeek in an attempt to  
 10 hide the level of monopolistic power and control Ticketmaster has,” and in  
 11 exchange, “Ticketmaster has made SeatGeek set ticket prices at the same high price  
 12 as Ticketmaster.” (SAC ¶ 481.) Plaintiffs do not allege anything further about this  
 13 alleged market division scheme; there are no allegations regarding who participated  
 14 in the scheme, what “territories” are at issue, or who the customers are who fall into  
 15 these alleged territories. And, once again, there are no allegations as to any  
 16 participation whatsoever by SoFi, as the naming rights sponsor, even assuming  
 17 arguendo any such scheme. Plaintiffs’ market division claim fails because they  
 18 have not even attempted to meet their pleading burdens as to SoFi. *Iqbal*, 556 U.S.  
 19 at 678; *Twombly*, 550 U.S. at 555-56; *Freeman*, 77 Cal. App. 4th at 196.

## 20 **B. Violations of Section 17200.**

21 Plaintiffs style their Sixth Claim for Relief as “Against All Defendants” but  
 22 none of the allegations pertain to SoFi at all. Rather, the allegations are exclusively  
 23 against Ticketmaster, claiming that it engaged in unfair practices to make it  
 24 “difficult for a primary ticket purchaser to resell his or her ticket on competitive  
 25 non-Ticketmaster Secondary Ticket Exchanges.” (SAC ¶ 492.) There is only one  
 26 passing reference to SoFi in this claim, with a vague and unsupported assertion that  
 27 Ticketmaster acted “in collusion with its parent Live Nation as well as stadiums not  
 28 owned by Live Nation, including SoFi Stadium . . . .” (SAC ¶ 488.) But, again, the



1 term “SoFi Stadium,” as used in the SAC includes both Defendant KSE, alleged to  
 2 be the owner of the physical stadium, and Defendant SoFi, which is alleged to be  
 3 nothing more than the naming rights sponsor of the stadium. There are no  
 4 allegations in the Sixth Claim for Relief that SoFi had any role or involvement in  
 5 any of the acts alleged in the Sixth Claim for Relief, and there are no particular  
 6 factual allegations of collusion or conspiracy sufficient to state a claim. Under  
 7 California law, to plead a claim for civil conspiracy, Plaintiffs are required to  
 8 allege: “(1) the formation and operation of the conspiracy, (2) wrongful conduct in  
 9 furtherance of the conspiracy, and (3) damages arising from the wrongful conduct.”  
 10 *Kidron v. Movie Acquisition Corp.*, 40 Cal. App. 4th 1571, 1582 (1995). “An entity  
 11 that engages in legitimate business with a party that is acting tortiously cannot be  
 12 deemed a co-conspirator, absent clear evidence of an agreement to join in the  
 13 tortious conduct.” *Id.* at 1590. Despite these clear requirements, the SAC lacks any  
 14 such allegations.<sup>6</sup>

15 Furthermore, there are no allegations of fraud or misrepresentation by SoFi in  
 16 the Sixth Claim for Relief. The only allegations of fraud are against Ticketmaster,  
 17 which Plaintiffs claim “has made deceptive and/or false statements intended to  
 18 mislead consumers about the reliability of other Secondary Ticket Exchange, the  
 19 authenticity of Taylor Swift tickets sold on other Secondary Ticket Exchange, and  
 20 the ability of purchasers to obtain secondary Taylor Swift tickets from sources other  
 21 than Ticketmaster.” (SAC ¶ 488.) There is no allegation in the Sixth Claim for  
 22 Relief that SoFi was at all involved in any of those alleged false statements. To the  
 23 extent that Plaintiffs are asserting that SoFi should be held liable for any such  
 24 statements, they have not met their pleading obligations under California law or  
 25 under Rule 9(b) of the Federal Rules of Civil Procedure. *Kidron*, 40 Cal. App. 4th  
 26 at 1582; *Vess*, 317 F.3d at 1103, 1106 (9th Cir. 2003) (“Rule 9(b) applies to

27  
 28 <sup>6</sup> To the extent Plaintiffs are relying upon their antitrust claims to support their  
 claim under Section 17200, such claim would fail for the same reasons set forth  
*supra*. See *supra* § IV.A.

1 ‘averments of fraud’ in all civil cases in federal district court, and that in cases in  
 2 which fraud is not an essential element of the claim, Rule 9(b) applies, but only to  
 3 particular averments of fraud.”<sup>7</sup>

4 Finally, Plaintiffs have not alleged facts that they are entitled to any  
 5 restitution from Defendant SoFi. Plaintiffs allege that “Ticketmaster’s unlawful,  
 6 unfair, and deceptive business practices have caused Plaintiffs to part with value in  
 7 an amount not presently known with precision, but which is, at minimum, in the  
 8 thousands of dollars per plaintiff, to which each is entitled to restitution.” (SAC  
 9 ¶ 498.) But the Sixth Claim for Relief alleges “consumer harm” from  
 10 Ticketmaster’s alleged steps to discourage ticket holders from reselling their tickets  
 11 on other Secondary Ticket Exchanges (SAC ¶¶ 491-96), which is a claim for  
 12 damages, not restitution. Damages are not an available remedy under the UCL.  
 13 *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144, 1148 (2003)  
 14 (“We hold that nonrestitutionary disgorgement of profits is not an available remedy  
 15 in an individual action under the UCL.”) As the California Supreme Court held in  
 16 *Korea Supply*, restitution only allows for restitution of ““money obtained through  
 17 an unfair business practice to those persons in interest from whom the property was  
 18 taken, that is to persons who had an ownership interest in the property or those  
 19 claiming through that person.”” *Id.* at 1149 (quoting *Kraus v. Trinity Mgmt. Servs.*,  
 20 *Inc.*, 23 Cal.4th 116, 126-127 (2000)). It does not allow for damages flowing from a  
 21 lost business opportunity such as being able to sell tickets on a different secondary  
 22 ticket exchange. *Korea Supply*, 29 Cal. 4th at 1150 (citing *MAI Systems Corp. v.*  
 23 *UIPS*, 856 F. Supp. 538, 542 (N.D. Cal. 1994).

24 Nor have Plaintiffs alleged any facts suggesting that they gave any monies or  
 25 property to Defendant SoFi. Plaintiffs’ only allegation as to SoFi is, on information

26  
 27 <sup>7</sup> The same is true under California procedures and law. *See, e.g., Stansfield v.*  
 28 *Starkey*, 220 Cal. App. 3d 59, 72-73 (1990) (“This particularity requirement  
 necessitates pleading facts which ‘show how, when, where, to whom, and by what  
 means the representations were tendered.’”) (quoting *Hills Transp. Co. v. Sw.*  
*Forest Indus. Inc.*, 266 Cal. App. 2d 702, 707 (1968), emphasis in original).



1 and belief, that Defendant SoFi somehow indirectly “benefits” from ticket sales at  
 2 the stadium. But Plaintiffs do not allege (and in fact could not allege) what those  
 3 alleged “benefits” were, that Plaintiffs have a vested interest in such monies, or that  
 4 they claim to have paid to Ticketmaster that were transferred or paid, directly or  
 5 indirectly, to Defendant Sofi. (SAC ¶¶ 367, 487-498.) In fact it is implausible that  
 6 SoFi would receive funds under an agreement where it pays to have its name used  
 7 with a stadium. Accordingly, Plaintiffs have no claim for restitution from  
 8 Defendant SoFi under the UCL.

9 **C. Plaintiffs Should Not Be Given Leave to Amend Against SoFi.**

10 The SAC is Plaintiffs’ third attempt at alleging viable claims and it should  
 11 not be granted any additional attempts to rope in SoFi, who has nothing to do with  
 12 the claims alleged. Plaintiffs first filed in Superior Court for the County of Los  
 13 Angeles and then amended their Complaint. After removal, Plaintiffs again  
 14 amended their Complaint. However, in doing so, Plaintiffs only added the most  
 15 threadbare of allegations against Defendant SoFi. And there is no basis on which to  
 16 allege that SoFi is at all involved in any of the claims Plaintiffs allege within the  
 17 confines of Rule 11, and after the SAC was served on SoFi, counsel for SoFi wrote  
 18 to Plaintiffs’ counsel informing them that SoFi has nothing whatsoever to do with  
 19 the ticketing operations at the stadium. Leave to amend should be denied when any  
 20 such amendments would be futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962)  
 21 (leave to amend should be freely given unless amendment would be futile).

22 **V. CONCLUSION**

23 Plaintiffs have failed at any point to include a single asserted fact suggesting  
 24 that SoFi Technologies had any role whatsoever in the allegations of the SAC.  
 25 Aside from the myriad substantive deficiencies in the claims put forward, Plaintiffs  
 26 have failed under California and federal law to meet their basic pleading burden by  
 27 alleging facts showing who at SoFi agreed with whom from any other Defendant on  
 28 any topic related to ticketing at SoFi Stadium. Defendant SoFi Technologies, Inc.

1 respectfully requests that the Court dismiss the claims against SoFi Technologies  
2 with prejudice.

3  
4 Dated: December 15, 2023

Respectfully submitted,

5 BERRY SILBERBERG STOKES PC

6  
7 /s/ Joshua C. Stokes

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11 Attorneys for Defendant SoFi  
12 Technologies, Inc.  
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1                                   **CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.1**

2           The undersigned, counsel of record for Defendant SoFi Technologies, Inc.,  
3 certifies that this brief contains 6,768 words, which complies with the word limit of  
4 L.R. 11-6.1.

5  
6                                   BERRY SILBERBERG STOKES PC

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**CERTIFICATE OF SERVICE**

I hereby certify that, on December 15, 2023, I electronically filed the foregoing document(s) using the CM/ECF system, which will send notification of such filing to the e-mail addresses registered in the CM/ECF system.

/s/ Joshua C. Stokes

Joshua C. Stokes